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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/074,304	02/12/2002	Rusty Shepard	06005/38039	6402
4743	7590	06/04/2004	EXAMINER	
MARSHALL, GERSTEIN & BORUN LLP 6300 SEARS TOWER 233 S. WACKER DRIVE CHICAGO, IL 60606			SHIN, CHRISTOPHER B	
			ART UNIT	PAPER NUMBER
			2182	
DATE MAILED: 06/04/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)
	10/074,304	SHEPARD ET AL.
	Examiner Christopher B Shin	Art Unit 2182

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 11 March 2004.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-48 is/are pending in the application.
 4a) Of the above claim(s) 6,7,10-27,32-38 and 42-48 is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-5,8,9,28-31 and 37-41 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>2-4</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of Group I, claims 1-41 in Paper No. 6 are acknowledged.

Applicant's election with traverse of too many species in claims 1-41 in Paper No. 6 is acknowledged. Examiner notes that generic claims are/includes (1-3, 28 & 39). The traversal is on the ground(s) that 1) examiner has not provided reasoning or examples for the conclusion that each of the identified species groups is a patentable distinct species, as required by MPEP 803, because the identified species groups have been improperly identified according to the claims and because the identified species group are not mutually exclusive; 2) examiner has not demonstrated or explained how each of the species groups (i)-(xxii) requires a separate classification, separate status in the art, or a different field of search, as required by MPEP 803; 3) the species groups are not defined according to the claims; 4) examiner has not defined the identified species groups according to mutually exclusive characteristics.

This is not found persuasive because the species listed under paragraph 6 (page 3 of the last office action) are listed according to different/distinct subject matters that require different searches. In addition, as can be seen from the **combination** of generic claims and numerous sets of species, generic claims recite very broad & generic structure is very commonly known in the art, without specifically defining operational characteristics; therefore, examiner finds much difficulty determining a gist of present invention(s). For the above reasons, the

examiner finds it very difficult to provide separate status & classification in the art. However, the different species listed according to the searchable subject matters that require serious burden on examiner, due to the special nature of the **combination** of generic claims and multiple species.

The examiner, however, finds some of the applicant's argument regarding mutually exclusive characteristics persuasive; as a result, the elected claims 1-5, 8-9, 28-31 & 39-41 will be examined.

The examiner kindly asks the applicant to help the examiner in terms of searching and determining one invention.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-5, 8-9, 28-31 & 39-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fukai et al. (4,542,452).

Fukai reference teaches the all of the basic/substantially identical claimed limitations as follows:

Claims 1-5, 8-9, 28-31, 39-41

Fukai et al (4,542,452)

- A controller for use in a controlling a plurality of devices within a process

- Feature of figure 1, (10)
- a processor adapted to be programmed to execute one or more programming routines
 - Feature of (13)
- Memory coupled to the processor and adapted to store the one or more programming routines to be executed on the processor
 - Feature of (21)
- A plurality of field device input/output ports communicatively connected to the processor
 - Feature of Ei & Eo and Di & Do
- A configuration communication port connected to the processor and to the memory
 - Feature of (50)
- Wherein the controller can operate as a stand-alone controller or as one of a plurality of controller within a distributed process control system
 - Features BSC of figure 8 or CSC of figure 9, column 7, line 30-68
- Second/third communication port adapted to be intermittently connected to a user interface to enable the user interface to view information stored within the memory or the processor
 - Feature of (18, 20)
- Register map
 - Obvious feature of communications between (17/19) and (13)
- non-volatile portion adapted to store configuration information pertaining to the controller/programming routines
 - Feature of (21)
- Programming routines compatible with a distributed process control system program paradigm
 - Obvious feature of supporting more than one controllers (17, 19, 13, 30)
- Second/third communication port is a MODBUS TCP
 - Not expressly taught, but well known type in the art.

As for claims 1-5, 8-9, 28-31 & 39-41, the difference between the claimed invention and the teachings of the Fukai reference is that the reference does not expressly disclose a specific type of MODBUS TCP; however, such communication type is one of the well known and practiced in the art. The examiner takes official notice on such well-known communication type. Therefore, it would have been obvious at the time the invention was made to one having ordinary skill in the art easily choose and add one of such well known

communication type such as the MODBUS TCP type in the Fukai's system for the reasons stated above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher B Shin whose telephone number is 703-305-9658. The examiner can normally be reached on 6:30-5:00 M,Tu,Th,F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Gaffin can be reached on 703-308-3301. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Christopher B Shin
Primary Examiner
Of 2182

June 1, 2004
CBS

